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**8. Equity (§ 24\*)—Relief against Penalties for Nonperformance of Contract.**—The true test by which to ascertain whether relief against a penalty for nonperformance of a contract can be had in equity is whether compensation can be made, and, if it cannot be made, equity will not interfere, but, if it can, it will grant relief.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 69-76; Dec. Dig. § 24.\* 11 Va.-W. Va. Enc. Dig. 173; 4 Id. 169.]

**9. Equity (§ 24\*)—Relief against Penalty to Secure Payment of Money.**—If a penalty provided for in a contract is merely to secure payment of money, courts of equity will relieve the party on payment of the principal and interest.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 69-76; Dec. Dig. § 24.\* 11 Va.-W. Va. Enc. Dig. 173; 4 Id. 169.]

Judgment reversed. All the judges concur.

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FARMERS' MFG. CO. *v.* WOODWORTH.

June 10, 1909.

[64 S. E. 986.]

**1. Evidence (§ 441\*)—Parol Evidence Affecting Writings—Contracts.**—A contract in writing, complete on its face, cannot be altered by parol evidence of inconsistent agreements previously or contemporaneously made.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 2030-2047; Dec. Dig. § 441.\* 10 Va.-W. Va. Enc. Dig. 650, et seq.]

**2. Evidence (§ 434\*)—Parol Evidence—Affecting Writings—Incomplete Contracts.**—A partnership wrote to plaintiff, stating that it would build a steel structure as per plans submitted. Plaintiff accepted the proposition. The plans referred to were blueprints drawn to no scale, and containing no specifications. Defendant's company erected the device, but it was condemned as unsafe. Held, in an action for breach of contract, that parol evidence was admissible to show that plaintiff was ignorant of the mechanism of the machine to be built; that defendant's company were mechanical experts; that plaintiff submitted the model to them, and that they submitted a plan of the device, and assured plaintiff that, if built according to that plan, it would meet the specified requirements, and that the machinery would be safe; that plaintiff gave the contract to defendant relying upon such warranties; that the machinery was wholly worthless; and that the representations made to induce plaintiff to enter into the contract were false.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 434.\* 10 Va.-W. Va. Enc. Dig. 704.]

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs: 1907 to date, & Reporter Indexes.

**3. Witnesses (§ 152\*)—Competency—Death of Party to Contract.—**

An agent of a corporation is not rendered incompetent to testify as to a contract by the death of a member of a partnership with whom the contract was made.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 658, 659; Dec. Dig. § 152.\* 13 Va.-W. Va. Enc. Dig. 934, et seq.; 951-2.]

Judgment reversed. All the judges concur.

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HUNTER et al. v. HICKS et al.

June 10, 1909.

[64 S. E. 988.]

**1. Deeds (§ 124\*)—Construction—Estates Conveyed—Fee Simple.**

—A husband deeded land and personal property to a trustee for the benefit of his wife, giving the wife power by the deed to sell the property and dispose of the proceeds as she might see fit with the co-operation of the trustee, who was required to execute such instruments as the wife should direct. If the wife should die before the husband, the grant of the property remaining was to cease, but she was to have power to dispose of one-half of it, the husband reserving the right if he died before his wife to dispose of one-half of the property then remaining by will. Held, that the wife took an absolute title to the property conveyed, the reservation to the husband being void for repugnancy to the first estate conveyed.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 344-355, 416-428; Dec. Dig. § 124.\* 5 Va.-W. Va. Enc. Dig. 166; 13 Id. 826, et seq.]

**2. Deeds (§ 142\*)—Estate Conveyed—Reservations—Validity.**—The reservation to the husband of one-half of the property remaining was void for uncertainty.

[Ed. Note.—For other cases, see Deeds, Dec. Dig. § 142.\* 4 Va.-W. Va. Enc. Dig. 438.]

Judgment reversed. All the judges concur.

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.